

REMARKS

Claims 20-38 are pending. No claims have been added, canceled, or amended. No new matter has been added. Claims 21, 31, 37 and 38 are the independent claims.

Non-statutory double patenting

Claims 20-38 stand rejected on the basis of non-statutory double patenting over Applicant's own United States Patent No. 6,768,771 to Costantini. The Examiner recognizes that a terminal disclaimer may be used to overcome the rejection. Such a terminal disclaimer is filed herewith. Accordingly, Applicant respectfully requests withdrawal of the non-statutory double patenting rejection.

Claims 21-30 and 37

Independent claims 21 and 37 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over the teachings of United States Patent No. 6,549,587 to Li ("Li") in view of United States Patent No. 5,903,603 to Kennedy *et al.* ("Kennedy"). Applicant respectfully traverses the rejection because the cited references do not teach *determining from a response signal* whether a far end modem is a commercial modem or a secure modem.

The Office Action acknowledges that Li does not teach a *determining* step (Office Action at § 2). Li discloses an operation of a commercial modem. The Office Action asserts that Kennedy discloses a determining step as inherent in Kennedy's operation.

Applicant respectfully submits, however, that Kennedy nowhere teaches such a determining step. Rather, Kennedy discloses the normal call setup operation of a secure modem. Kennedy's setup operation includes sending a 2100 Hz tone and receiving a P1800 response tone (Kennedy, c. 2, ll. 44-59). The Office Action states that the response tone in Kennedy "inherently signifies a secure telephone/modem capability" (Office Action dated 12/14/2007 § 2). Regardless of the what the tone signifies in hindsight, Kennedy does not make a "commercial or secure" determination based on the response tone. Kennedy merely uses the expected tone in the normal setup operation of the secure modem. This normal operation presupposes secure communications, and thus, Kennedy does not *determine* whether the far end modem is commercial *or* secure.

Moreover, Applicant respectfully submits that, prior to Applicant's invention, it was not obvious that an ANSam tone, which is used in training commercial (*e.g.*, V.8) modems, and its response tone could be used to determine whether a far-end modem is operating in a secure mode. That is, only with the benefit of Applicant's invention has it become known that an ANSam tone may be used to cause a far-end modem to respond in such a way that the initiating modem can determine from the response whether the far-end modem is operating in a commercial or a secure mode. In fact, nothing in the cited references suggests using the ANSam tone and its response for this purpose.

For all the foregoing reasons, Applicant submits that independent claims 21 and 37 patentably define over the cited art and are allowable. Claims 22-30, which depend from independent claim 21, are also allowable, at least by virtue of their dependence from an allowable independent claim.

Claims 31-36 and 38

Independent claims 31 and 38 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over the teachings of United States Patent No. 5,963,621 to Dimolitsas *et al.* ("Dimolitsas") in view of United States Patent No. 6,788,651 to Brent *et al.* ("Brent"). Applicant respectfully traverses the rejection because the cited references do not teach *determining from a response signal* whether a far end modem is a commercial modem *or* a secure modem.

The Office Action acknowledges that Dimolitsas does not teach a *determining* step (Office Action dated 12/14/2007 § 6). Dimolitsas discloses an operation of a secure modem. The Office Action asserts that Brent discloses a determining step as inherent in Brent's operation.

Applicant respectfully submits, however, that Brent nowhere teaches such a determining step. Rather, Brent discloses a normal setup operation of a commercial modem. Specifically, Brent discloses that a 1800 Hz tone met with a 600 Hz and 3000 Hz response tone may be used to indicate a V.32 modem connection. The Office Action states that the response tone in Brent inherently signifies a commercial modem. Regardless of the what the tone signifies in hindsight, Brent does not make a "commercial or secure" determination

based on the response tone. Brent presupposes a commercial modem, and thus, does not *determine* whether the far end modem is commercial *or* secure.

Moreover, Applicant respectfully submits that, prior to Applicant's invention, it was not obvious that a P1800 Hz tone with phase reversals (the secure STU-III "alternate mode" signaling response) could be used to determine whether a far-end modem is a commercial modem. The commercial V.32 specification requires a pure 1800 Hz tone. (Specification p. 11). That is, only with the benefit of Applicant's invention has it become known that a P1800 Hz tone with phase reversals may be used to cause a far-end modem to respond in such a way that the initiating modem can determine from the response whether the far-end modem is operating in a commercial or a secure mode. This is supported by the fact that nothing in the cited references suggest using the P1800 Hz tone with phase reversals for this purpose.

For all the foregoing reasons, Applicant submits that independent claims 31 and 38 patentably define over the cited art and are allowable. Claims 32-36, which depend from independent claim 31, are also allowable, at least by virtue of their dependence from an allowable independent claim.

Respectfully submitted,

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